

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SOFTWARE RIGHTS ARCHIVE, LLC,
Plaintiff,
v.
FACEBOOK, INC.,
Defendant.

Case No. C:12-03970 RMW

**ORDER REGARDING DISCOVERY
DISPUTE JOINT REPORT # 2**

By way of Discovery Dispute Joint Report # 2, Plaintiff Software Rights Archive, LLC ("SRA") seeks an order requiring defendant Facebook, Inc. ("Facebook") to supplement its response to its Interrogatory No. 1, subparts A, C, D and G to identify the location of specific features within Facebook's source code that SRA alleges it cannot locate in the source code standing alone.

Given the complex nature of the technological issues central to this discovery dispute—which depend in large part on (1) SRA's source code expert's ability to review Facebook's source code and (2) the capacity of Facebook's engineers to identify certain features in its source code—the court concludes that a neutral technical advisor would substantially aid the court in discovering the truth and resolving the dispute. The court has the inherent authority to appoint a technical advisor in such circumstances. *TechSearch, L.L.C. v. Intel Corp.*, 286 F.3d 1360, 1377-

1 78 (Fed. Cir. 2002) ("The trial court's inherent search for truth is the basic building block by
2 which the judicial process maintains its credibility within the fabric of our society. In this search,
3 it cannot be expected that trial judges will have expertise in biotechnology, microprocessor
4 technology, organic chemistry, or other complex scientific disciplines. Therefore, in those limited
5 cases where the scientific complexity of the technology is such that the district court may require
6 the assistance of a technical advisor to aid in understanding the complex technology underlying
7 the patent, it has the inherent authority to appoint such an advisor.").

8 The court proposes Dr. A. J. Nichols, *see* <http://www.neutralexpert.com/biography.htm>, to
9 educate the court on the technology underlying this and possible future discovery disputes. In the
10 event that either party finds Dr. Nichols unacceptable, the parties may confer to select an
11 alternative technical advisor. If the parties find Dr. Nichols unacceptable and *cannot* agree on an
12 alternative technical advisor, each side may submit no more than two proposed technical advisors
13 to the court. The costs and expenses of the technical advisor will be shared equally by the parties
14 unless otherwise ordered by the court.

15 Because the court wishes to keep discovery moving quickly, the court orders the parties to
16 file a response to this order on or before August 7, 2013, indicating whether Dr. Nichols will be
17 acceptable, and if not, indicating the parties' proposed alternative technical expert(s).

18 The court defers acting on Joint Discovery Dispute # 2 until such time as the court has
19 expert assistance.

20 **IT IS SO ORDERED**

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22 Dated: July 31, 2013

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24 Ronald M. Whyte
25 United States District Judge
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